Joint Committee on Taxation
July 31, 1991
JCX-14-91

COMMITTEE ON WAYS AND MEANS

MARKUP ON JULY 31, 1991 OF

HIGHWAY TRUST FUND EXTENSION (H.R. 2950)

H.R. 2950 (the "Intermodal Surface Transportation Infrastructure Act of 1991") was ordered reported on July 25, 1991, by the House Committee on Public Works and Transportation (H. Rpt. 102-171, Part 1, July 26, 1991). The bill was sequentially referred to the Committee on Ways and Means for a period ending July 31, 1991. The Committee on Public Works and Transportation is requesting that the Committee on Ways and Means provide a revenue title (Title VII) for the bill.

Present Law

A. Tax Provisions

Highway-Related Excise Taxes

Excise taxes are imposed on gasoline and diesel and special motor fuels, certain heavy trucks and truck trailers, heavy tires, and the use of heavy highway vehicles. (See below for a table of the present Highway Trust Fund ("HTF") excise tax rates.) The HTF motor fuels excise taxes were extended through September 30, 1995, in the Omnibus Budget Reconciliation Act of 1990 (the "1990 Act").

The 1990 Act also increased the highway and motorboat fuels tax rates by 5 cents per gallon and imposed a tax of 2.5 cents per gallon on diesel fuel used in trains (through September 30, 1995). Revenues equivalent to 2.5 cents per gallon of the taxes on highway and motorboat fuels are retained in the General Fund; the balance of the highway and motorboat fuels tax revenues is transferred to the HTF.[1] Revenues from the tax on train diesel fuel are retained in the General Fund. All revenues from the non-fuels highway-related excise taxes are transferred to the HTF.

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1 Motorboat fuels tax revenues are then transferred to the Aquatic Resources Trust Fund (the "Aquatic Fund").

Revenues equivalent to 1.5 cents per gallon of the taxes on highway motor fuels that are transferred to the HTF are credited to the Mass Transit Account in the HTF. The balance of the highway motor fuels tax revenues (and the revenues from the other highway excise taxes) are credited to the HTF's Highway Account.

Amounts transferred to the HTF are equivalent to gross receipts derived from the dedicated excise taxes. (See below for a more complete discussion of this issue.)

The highway-related excise taxes, the motorboat fuels tax, and the tax on train diesel fuel currently are scheduled to expire on October 1, 1995. HTF expenditure authority is scheduled to expire on October 1, 1993.

The following table shows the current HTF taxes and rates:

Tax	Tax Rate
Motor fuels[2]:	
Gasoline and special motor fuels	14 cents per gallon (11.5 cents per gallon is transferred to the HTF)[3]
Diesel fuel	20 cents per gallon (17.5 cents per gallon is transferred to the HTF)
Trucks and trailers:	
Trucks (over 33,000 lbs.) and trailers (over 26,000 lbs.)	12 percent of retail price
Tires for highway vehicles:	40 lbs. or less--no tax 40-70 lbs.--15 cents/lb. over 40 lbs. 70-90 lbs.--$4.50, plus 30 cents/lb. over 70 lbs. Over 90 lbs.--$10.50, plus 50 cents/lb. over 90 lbs.

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2 Motor fuels also are subject to a separate tax of 0.1 cent per gallon to fund the Leaking Underground Storage Tank Trust Fund.

3 11.5 cents per gallon attributable to motorboat fuels and gasoline used in certain small engines is transferred from the HTF to the Aquatic Fund.

Use tax on heavy highway vehicles: Under 55,000 lbs.--no tax
55,000-75,000 lbs. --$100, plus $22/1,000 lbs. over 55,000 lbs.
Over 75,000 lbs.--$550

Exemptions

Exemptions are provided from the highway excise taxes for State and local governments and tax-exempt educational organizations. The highway motor fuels taxes also do not apply to fuels used in off-highway business uses (e.g., farming) or in local or school buses.

Intercity buses are exempt from all but 3 cents per gallon of the HTF motor fuels taxes. A series of partial exemptions apply to alcohol fuels and fuels mixtures. The most widely used of these is a 5.4 cents per gallon exemption for "gasohol," a mixture of gasoline and at least 10-percent ethanol.

B. Highway Trust Fund

Highway/Transit Funding Provisions

Highway Account

The Internal Revenue Code ("the Code") provides that amounts in the HTF are to be available through September 30, 1993, as provided in appropriation acts, for meeting obligations incurred which are authorized to be paid out of the HTF under (1) the Highway Revenue Act of 1956, (2) Title I or II of the Surface Transportation Assistance Act of 1982 (the "1982 Act"), (3) the Surface Transportation and Uniform Relocation Act of 1987 (the "1987 Act"), or (4) thereafter, amounts for a general purpose authorized under these Acts as in effect on the date of enactment of the 1987 Act. The 1982 Act established a separate Highway Account and a Mass Transit Account (see below) in the HTF.

The present-law expenditure purposes for the Highway Account include the following highway-related programs:

-- Interstate highways and resurfacing and repair;
-- Federal-aid highways, including primary and secondary systems and urban systems;
-- Forest and public lands highways, scenic highways, parkways, Indian reservation roads;
-- Bridge replacement and rehabilitation;
-- Emergency (disaster) relief;
-- Highway safety research and development;
-- Highway-related safety grants;
-- Motor carrier safety grants;
-- Traffic control demonstration grants;
-- Highway hazard elimination projects;

-- Rail crossings and demonstration projects;
-- Traffic control signal demonstration projects;
-- Urban system public transportation projects (bus and rail transit facilities on a Federal-aid urban system);
-- Fringe and corridor parking facilities;
-- Carpool and vanpool grants;
-- Bicycle ways and pedestrian walkways;
-- National Highway Traffic Safety Administration (NHTSA) traffic safety programs;
-- Certain administrative costs of Federal Highway Administration and NHTSA;
-- University transportation research centers; and
-- Highway beautification projects.

Mass Transit Account

The Code provides that amounts in the Mass Transit Account of the HTF are available through September 30, 1993, as provided in appropriation acts, for making capital expenditures (including new projects) under section 21(a)(2) of the Urban Mass Transportation Act of 1964. The Urban Mass Transportation Act of 1964 (sec. 21(b)) also provides for additional Mass Transit Account authorizations from the HTF (including mass transit block grants).

Transfers to the Aquatic Resources Trust Fund and the Land and Water Conservation Fund

Revenues equivalent to 11.5 cents per gallon of the 14-cents-per-gallon tax on gasoline and special motor fuels used in motorboats are transferred (through September 30, 1995) from the HTF as follows:

(1) $1 million per year to the Land and Water Conservation Fund;

(2) up to $70 million per year to the Boating Safety Account of the Aquatic Fund, of which one-half is for State recreational boating safety programs and one-half is for Coast Guard recreational boating safety expenses; and

(3) any excess motorboat fuels tax revenues (from the 11.5 cents per gallon rate) to the Sport Fish Restoration Account of the Aquatic Fund for grants to States for fish restoration and management projects.

Amounts equivalent to revenues from the tax on gasoline used in certain small engines also are transferred to the Aquatic Fund to be available for financing certain coastal wetlands programs (subject to enactment of future authorizing legislation).

C. Budget Considerations

1990 Act Budget Scorekeeping Rules

The 1990 Act established new budget scorekeeping rules for legislation with budgetary consequences. The Act subjects discretionary spending (i.e., appropriations) for 1991 through 1995 to specified dollar maximums ("caps"). Increases in discretionary spending may not be offset by higher taxes or fees under the new budget rules.

Direct spending (entitlements and other mandatory spending) may be increased only if the increase is offset in each year by lower direct spending elsewhere or by higher taxes or fees (i.e., "pay-as-you-go").

Historically, spending for highway and transit programs has been classified as discretionary spending. Consequently, an increase in highway spending typically would be counted against the discretionary caps. As stated above, the new rules do not allow funding such an increase by raising highway-related excise taxes. This problem may be solved either by allowing an exception to the discretionary caps for additional highway spending or by classifying additional highway spending as direct spending and offsetting the additional spending with higher taxes for pay-as-you-go purposes.

As stated above, the HTF historically has been financed with amounts equivalent to gross revenues from the highway-related excise taxes. Under the new pay-as-you-go budget rules, new direct spending may not exceed net revenues. For budget purposes, net excise tax revenues generally are assumed to equal 75 percent of gross revenues.

Highway Trust Fund Anti-Deficit Provisions

HTF taxes have generally been extended for two years beyond the then-current authorization period. This is due to the lead time required between the time a project is authorized or obligated and the time money is needed to pay for it. Also, the so-called "Byrd Amendment" requires that highway apportionments be reduced proportionately if unfunded Highway Account authorizations exceed estimated HTF receipts (including interest, minus transfers) in the following 24-month period. Unfunded transit authorizations may not exceed estimated Mass Transit Account receipts in the following 12-month period.

Description of H.R. 2950

A. Overview and Funding Assumptions

H.R. 2950 would extend HTF expenditure authorizations for the HTF for five years, through September 30, 1996. The funding levels provided in the bill are based on the present taxes and rates and an assumed extension from October 1, 1995, through September 30, 1998, of pre-1990 Act fuels tax rates. The pre-1990 Act rates were (1) 9 cents per gallon of the current gasoline and special motor fuels taxes and (2) 15 cents per gallon of the highway diesel fuel tax.

The bill further assumes imposition of an additional 5 cents per gallon in the highway and motorboat fuels tax rates, effective from October 1, 1991, through September 30, 1998. Thus, the gasoline tax rate would be 19 cents per gallon through September 30, 1995, and 14 cents per gallon thereafter through September 30, 1998.[4]

The bill assumes that amounts equivalent to gross revenue from 4 cents per gallon of the 5-cents-per-gallon increase in the revenue raised by the highway motor fuels tax rates will be transferred to the HTF's Highway Account, with amounts equivalent to the gross revenue raised by the remaining 1 cent per gallon going to the HTF's Mass Transit Account.

B. HTF Authorizations

H.R. 2950 provides HTF authorizations for fiscal years 1992-1996 for highway, transit, and related programs. The bill provides a 5-year total of HTF highway and transit authorizations of $143.0 billion, including $121.5 billion from the Highway Account and $21.5 billion from the Mass Transit Account. The bill also provides $10.5 billion in mass transit authorizations from the General Fund, for a 5-year total authorizations of $153.5 billion.

Highway Account Authorizations

The principal Highway Account authorizations for the 5-year period include $8.1 billion for completion of the Interstate System, $37.9 billion for the National Highway System, $13.2 billion for the State Flexible Program, $13.2 billion for the Urban Mobility System, $10.1 billion for the Rural Mobility System, $16.2 billion for the Bridge Program, $5.2 billion for highway safety programs, and $6.8 billion in designated projects. The designated projects include projects for high-cost bridges, congestion relief, rural

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4 This result is achieved by assuming that the 5-cents-per-gallon increase imposed by the 1990 Act expires as scheduled in 1995.

access, urban access, innovative highway technology, high priority corridor segments for the National Highway System, and priority intermodal projects.

Funds for highway system programs may be used generally for highway construction and transit capital projects. Eligible spending includes highway safety improvements, research and planning, traffic management and control, fringe and corridor parking, carpool and vanpool projects, bicycle transportation, pedestrian walkways, State transportation management systems, billboard removal, landscaping, scenic enhancement (e.g., planting of wildflowers), and wetland mitigation and conservation.

Highway Account authorizations also include $10 million per year for highway use tax compliance projects. These funds may be allocated to the Internal Revenue Service ("IRS") and the States at the discretion of the Secretary of Transportation ("DOT").

In addition, the bill provides $50 million for fiscal 1994 for reimbursement to the States for lost revenues from the bill's mandated removal of certain State motor carrier fees. Further, the bill provides for specific authorizations from the Highway Account of $75 million per year for construction of ferry boats and $7 million per year for University Transportation Centers.

Mass Transit Account Authorizations

Title III of the bill expands the purposes for which Mass Transit Account money may be spent and increases total Mass Transit Account authorizations. The bill provides funds for block grants for urban and rural transit, discretionary grants for capital projects, mass transit research and development, transit planning and technical studies and assistance, development of innovative transit operation and management, University Transportation Centers, and grants for human resource needs relating to public transportation and a national transit needs survey.

C. Budget Act Provisions

Pay-As-You-Go

To resolve problems encountered under the 1990 Act budget rules, H.R. 2950 (sec. 104) provides that specified amounts of budget ("contract") authority and accompanying outlays are to be considered direct spending and counted as such for pay-as-you-go purposes. The specified amounts of budget authority are consistent with the gross revenues raised by the additional 5-cents-per-gallon tax on highway motor fuels. The intent of this provision is to classify the additional amount of highway spending as direct spending so that the spending can be offset by increased taxes under the pay-as-you-go rules. By transferring gross revenues from the

additional excise taxes to the affected trust funds rather than net revenues, the bill, as reported, may not fully achieve its intended purpose.

The bill also requires that in any year in which revenues from the 5-cents-per-gallon increase in motor fuels taxes exceed outlays from the bill that are classified as direct spending for pay-as-you-go scoring, the "excess" revenues are not counted for pay-as-you-go purposes. These funds also are not to be available to fund any programs other than those provided for by H.R. 2950.

Obligation Ceilings

The bill provides obligation ceilings, with certain exceptions, for Federal highway and highway safety programs for fiscal years 1992-1996. The bill also provides that if, for any fiscal year, any limitation on obligations for Federal highway and highway safety programs is established which is less that the general limitation under the bill, no funds may be apportioned to the States and no funds may be obligated in that fiscal year.

Possible Option

Adopt each of the following:

1. Tax Rates and Extensions

a. Extend the expiration date of the current highway-related excise taxes (including the 2.5-cents-per-gallon General Fund tax on motor fuels) and the taxes on motorboat and small engine fuels and train diesel fuel for three additional years, through September 30, 1998.

b. Increase the highway and motorboat fuels excise tax rates by 5 cents per gallon (to 19 cents per gallon on gasoline and special motor fuels and 25 cents per gallon on diesel fuel), during the period January 1, 1992, through September 30, 1996, with appropriate floor stocks taxes being imposed in 1992.[5]

2. HTF Revenue Transfers

a. Extend the termination date for transfers into the HTF of gross revenues equivalent to the taxes currently deposited in the HTF through September 30, 1998.

b. Provide for transfer to the HTF of net revenues attributable to the additional 5-cents-per-gallon taxes on motor fuels used in highway vehicles through September 30, 1996, with 80 percent of these revenues being allocated to the Highway Account and 20 percent to the Mass Transit Account.

3. Motorboat Fuels Tax Provisions and Partial Repeal of Annual Recreational Boat User Fee

a. Effective on January 1, 1992, repeal the annual recreational boat user fee imposed on boats under 27 feet in length, as enacted by the 1990 Act and imposed under 46 U.S.C. 2110(b).[6]

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The tax on train diesel fuel would continue at 2.5 cents per gallon under the option. Off-highway business use (e.g., farming) would continue to be fully exempt from these taxes. Partial exemptions (e.g., gasohol and intercity buses) would continue at their present cents-per-gallon reductions from the new tax rates.

6 Under the 1990 Act, for fiscal years 1991-1995, the annual fee is imposed as follows: (a) for vessels of 16-20 feet, not more than $25; (b) for vessels of 20-27 feet, not more than $35; (c) for vessels of 27-40 feet, not more than $50; and (d) for vessels of 40 feet or more, not more than $100. Revenue from this fee is deposited in the General Fund as offsetting receipts for Coast Guard activities.

(Footnote continued)

b. Retain in the General Fund amounts equivalent to the following revenues that otherwise would be transferred to the Aquatic Fund during the periods specified:

(1) The net revenues from the additional 5-cents-per-gallon tax rate applicable to motorboat fuels, effective from January 1, 1992, through September 30, 1995; and

(2) The gross revenues from the 1990 Act's additional 2.5 cents per gallon trust fund tax rate applicable to motorboat fuels, effective from December 1, 1990, through September 30, 1995.

4. HTF Authorizations

a. Extend authority to spend from the HTF through September 30, 1996, to conform to the authorizing provisions of H.R. 2950.

b. Incorporate the expenditure purposes provided in H.R. 2950 into the Code's expenditure purposes, and clarify that the Code's expenditure purposes include only those purposes enumerated in the Acts listed in the Code, as of the date of H.R. 2950's enactment.

c. With regard to the HTF revenues authorized to be transferred by DOT to the IRS to be used for motor fuels tax enforcement funding, clarify (1) that the transfer is mandatory, and (2) that DOT is not authorized to impose conditions on IRS use of the funds. Provide further that IRS must submit an annual report to the Committee on Ways and Means and the Committee on Finance at least 60 days before the beginning of the fiscal year in which the funds are to be transferred detailing the increased motor fuels enforcement activities to be financed.

5. Budget Act Compliance

a. Reserve any revenue from the increase in highway excise taxes provided by the bill in excess of "direct" spending provided under the bill in any given year for deficit reduction by prohibiting the excess from being used to offset other spending increases for pay-as-you-go purposes.

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[6] (continued)

H.R. 1776, as passed by the House on July 18, 1991, expresses the sense of the House that this fee should be repealed. H.R. 534, as ordered reported by the House Committee on Merchant Marine and Fisheries on June 12, 1991, would repeal the fee, effective on the date of enactment.

b. Provide that notwithstanding any other provision of the bill, new spending created by the bill may not exceed new net revenues raised by the bill in any fiscal year during the period that the pay-as-you-go requirement is in effect (i.e. through fiscal year 1995). This ensures that the bill will comply with the pay-as-you-go requirements.

c. Include in the bill the statements regarding budget effects required under Clause 8 of Rule 21 of the House rules.